

CHAPTER 4

FEDERAL REGULATIONS AND DEPARTMENTAL POLICIES IMPACTING AIRPORT WILDLIFE MANAGEMENT



During low level operations near Cannon AFB, New Mexico, 20 December 1985, this F-111 struck a red-tailed hawk, shattering the composite radome. The plane suffered \$165,000 in damage. (Photo courtesy USAF)

4.1 INTRODUCTION

Wildlife is often protected by overlapping federal, state, and local laws, regulations, and ordinances that are enforced by a diversity of governmental organizations. Chapter 3 provided an overview of the roles and responsibilities of the various agencies. This chapter will discuss some of the more important federal regulations and departmental policies that influence wildlife management at or near airports.

4.2 SUMMARY OF APPLICABLE FEDERAL REGULATIONS



This engine cowling was damaged by fan blades after a Canada goose was ingested into the engine during takeoff of a Boeing-747 at an airport in New York, 1984. (Photo by USDA)

4.2.a Title 14, Code of Federal Regulations, Part 139

14 CFR 139 governs the certification and operation of land airports which serve any scheduled or unscheduled passenger operation of an air carrier aircraft as covered under part 139. Part 139.337 speaks specifically to the airport operator's responsibilities when dealing with the reduction of wildlife strike hazards on and around airports. A detailed discussion of Part 139.337 can be found in Chapter 6.

4.2.b Title 40, Code of Federal Regulations, Part 258.10

The U.S. Environmental Protection Agency (USEPA), recognizing that birds can be attracted in large numbers to municipal solid waste landfills (MSWLF), and recognizing the potential threat posed by birds to aircraft safety, requires owners or operators of new MSWLF units, or lateral expansions of existing MSWLF units that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway

used only by piston-type aircraft, to demonstrate successfully that such units do not create hazardous conditions for aircraft.

The USEPA also requires any operator proposing a new or expanded waste disposal operation within 5 miles of a runway end to notify the appropriate FAA Regional Airports Division Office and the airport operator of the proposal.

4.2.c Title 50, Code of Federal Regulations, Parts 1 to 199

These regulations govern the management of federally protected wildlife within the United States and its territories, and are based on the authority established in the Migratory Bird Treaty Act (see below). These regulations also establish procedures for issuing permits to take federally protected species. In general, a federal depredation permit, issued by the U.S. Fish and Wildlife Service (USFWS), must be obtained before

any non-game migratory birds may be taken, or before any migratory game birds may be taken outside of the normal hunting season or beyond established bag limits.

Federal law protects all migratory birds, including nests and eggs:

- "A migratory bird [is]...any bird whatever its origin and whether or not raised in captivity, which belongs to a species listed in sect. 10.13 [of 50 CFR] or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consist, or is composed in whole or part, of any such bird, or any part, nest, or egg there of." (50 CFR 10.12). This list includes almost all native bird species in the United States, with the exception of nonmigratory game birds such as pheasants, turkeys and grouse. Exotic and feral species such as mute swans, graylag geese, muscovy ducks, European starlings, house (English) sparrows, and rock doves (pigeons) also are not listed in 50 CFR 10.13 and are therefore not protected by federal law.

In addition to federal protection, all states protect migratory birds as well as resident game birds such as pheasants, turkeys, grouse and partridges. States may or may not protect exotic or feral species.

With the exception of federally listed or proposed threatened or endangered species, federal law does not protect terrestrial mammals, reptiles or other wildlife taxa (e.g., deer, coyotes, raccoons, woodchucks, alligators). Protection of these wildlife groups is left to the various states.



Migratory birds as well as any product made from the birds' feathers, nests, or eggs may not be possessed without the appropriate federal permits. This drum, made from adult golden eagle tail feathers, was confiscated by the USFWS. (Photo courtesy National Fish and Wildlife Forensics Laboratory)

4.2.c.i Depredation Permitting Requirements and Procedures

Persons wishing to take migratory birds, nests, or eggs as part of an airport wildlife management program must first secure a depredation permit from the USFWS. Some state wildlife management agencies may require that a state permit be obtained also. Persons wishing to take state-protected species must first secure a permit from their respective state wildlife management agency. For assistance in obtaining federal and state depredation permits, contact the local U.S. Department of Agriculture, Wildlife Services (USDA/WS) office (Appendix A).

4.2.c.ii Standing Depredation Orders

Federal law does allow people to protect themselves and their property from damage caused by migratory birds, provided no effort is made to kill or capture the birds:



A federal permit is required to harass threatened or endangered species, as well as bald and golden eagles, from airports. This juvenile bald eagle had to be live-trapped and relocated. (Photo by E. C. Cleary, FAA)

- “No permit is required to merely scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles.” (50 CFR 21.41)

In addition, certain species of migratory birds may be killed or captured without a federal permit under specific circumstances, most of which relate to agricultural situations. A Standing Depredating Order that has applicability at airports relates to blackbirds and related species:

- “A federal permit shall not be required to control yellow-headed, red-

winged, rusty and Brewer's blackbird, cowbirds, all grackles, crows, and magpies, when found committing or about to commit depredation upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance...” (50 CFR 21.43).

However, state laws may not mirror federal law in this respect. For example, in Ohio crows may not be taken outside of the state crow-hunting season without a state-issued depredation permit, and blackbirds may not be killed on Sundays.

Persons wishing to take any other migratory birds, or to take migratory birds in situations other than those described above, must first secure a federal Migratory Bird Depredation Permit from the USFWS and, in some cases, a State Depredation Permit. The first step in obtaining the necessary permits is to contact the nearest USDA/WS state office (Appendix A).

4.2.d The Migratory Bird Treaty Act of 1918, as Amended (U.S. Code 603-711; 40 Statute 755)

The United States of America, Canada, the United Mexican States, Russia and Japan are signatories to the Migratory Bird Treaty Act (MBTA). This act provides the statutory foundation for the federal protection and management of migratory birds in the United States (50 CFR, Parts 1-199).

4.2.e The Animal Damage Control Act of 2 March 1931, as Amended (7 U.S. Code 426-426c; 46 Statute 1468)

This act authorizes and directs the Secretary of Agriculture to manage wildlife injurious to agricultural interests, other wildlife, or human health and safety, including wildlife hazards to aviation (Appendix B). USDA/WS is the agency that carries out this mandate. USDA/WS, because of the experience, training and background of its personnel, is recognized throughout the world for expertise in dealing with wildlife damage management issues. USDA/WS has an active presence in all U.S. states and territories. USDA/WS also has a National Wildlife Research Center in Colorado and 8 regional research field stations.

4.2.f Federal Insecticide, Fungicide, and Rodenticide Act, as Amended (7 U.S. Code 136; Public Law 104.317)

This act, administered by USEPA, governs the registration, labeling, classification, and use of pesticides. Any substance used as a pesticide must be registered with the USEPA and with the respective state pesticide-regulatory agency. Anyone wishing to use restricted-use pesticides, applying any pesticides to the land of another, or applying any pesticides for hire, must be a Certified Applicator, or working under the direct supervision of a Certified Applicator, and then may only use pesticides covered by the Certified Applicator's certification.

4.3 DEPARTMENTAL POLICIES

4.3.a FAA, Airports Division: Advisory Circular 150/5200-33. *Hazardous Wildlife Attractants on or near Airports*

This Advisory Circular (AC) provides guidance on locating certain land uses having the potential to attract hazardous wildlife to or in the vicinity of public-use airports. It also provides guidance concerning the placement of new airport



Habitat attractive to wildlife, such as shown in this photo at a mid-western U.S. airport, should be eliminated. (Photo by E. C. Cleary, FAA)

development projects (including airport construction, expansion, and renovation) pertaining to aircraft movement in the vicinity of hazardous wildlife attractants (Appendix C).

4.3.b FAA, Airports Division: Policies and Program Guidance Related to Airport Wildlife Management (Appendix D)

4.3.b.i Initiation of Ecological Studies at Airports: Airport Certification Program, Program Policy and Guidance, Policy No. 53 establishes the procedures FAA Airport Certification Safety Inspectors should follow when it is determined that an airport needs to conduct an ecological study¹ (Wildlife Hazard Assessment) to address an airport wildlife hazard.

4.3.b.ii Section 7 Consultation on Endangered or Threatened Species: Airport Certification Program, Program Policy and Guidance, Policy No. 57 establishes the procedures for coordinating and documenting FAA compliance with the Endangered Species Act when requiring an airport operator to develop, submit for approval, and implement a Wildlife Hazard Management Plan.

4.3.b.iii Review of Airport Wildlife Hazard Management Plans: Airport Certification Program, Program Policy and Guidance, Policy No. 64 establishes the procedures to be followed when an incident occurs that would initiate an ecological study (Wildlife Hazard Assessment) under 14 CFR 139.337(a)(1-3), and directs Airport Certification Safety Inspectors to review an airport's Wildlife Hazard Management Plan to insure that it meets all requirements of Part 14 CFR 139.337(e), as part of their preparation for a certification inspection.



The FAA must be notified before landfill development or expansion can occur within 5 miles of an airport. (Photo by R. A. Dolbeer, USDA)

4.3.b.iv Waste Disposal Facility Coordination: Airport Certification Program, Program Policy and Guidance, Policy No. 65 establishes the procedures for coordinating and documenting FAA determinations on developing new, or expanding existing waste disposal sites within 5 miles of a public-use airport.

¹ USDA, Wildlife Services, uses the term "Wildlife Hazard Assessment." 14 CFR 139.337(a) uses the term "Ecological Study." In this context the two terms should be considered synonymous. Wildlife Hazard Assessment is the preferred term because it is more descriptive of what is actually being done.

4.3.c FAA, Airports Division: Certalerts Relating to Airport Wildlife Management (Appendix E)

4.3.c.i The Relationship Between FAA and USDA/WS: FAA, Office of Airport Safety and Standards, Certalert No. 97-02, clarifies the roles of, and relationship between the Federal Aviation Administration (FAA) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services with regards to wildlife hazards on or near airports.

4.3.c.ii Wildlife Hazard Management Plan Outline: FAA, Office of Airport Safety and Standards, Certalert No. 97-09, was issued because an increasing number of questions were being received concerning the preparation and content of an FAA-approved airport Wildlife Hazard Management Plan. This Certalert provides a detailed outline, based on 14 CFR 139.337, of what a Wildlife Hazard Management Plan must address for FAA approval and inclusion in an Airport's Certification Manual. Chapter 6 contains a detailed discussion of this section.

4.3.c.iii Grasses Attractive to Hazardous Wildlife: FAA, Office of Airport Safety and Standards, Certalert No. 98-05, was issued because of reports of airport owners or airport contractors planting disturbed areas (construction sites, re-grading projects, etc.) with seed mixtures containing brown-top millet. All millets are a major attractant to doves and other seed eating birds that may pose a strike hazard to aircraft.

4.3.d USDA, Wildlife Services Directive 2.305, Wildlife Hazards to Aviation (Appendix F)

This directive provides general guidelines for USDA/WS technical and direct control assistance to airport managers, state aviation agencies, aviation industry, FAA, and Department of Defense regarding hazards caused by wildlife to airport safety.

4.3.e Memorandum of Understanding: FAA and USDA/WS (Appendix G)

A Memorandum of Understanding between the FAA and USDA/WS (No. 12-14-71-0003-MOU), establishing a cooperative relationship between the two agencies, has been in effect since 1989. The FAA relies heavily on the assistance of USDA/WS for resolving problems involving wildlife hazards to aviation.

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